

CHAPTER 20:69:06

REAL ESTATE AUCTIONEER LICENSES

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20:69:06:01.01. Definitions. Terms used in this chapter mean:

- (1) “Absentee bid,” a procedure that allows a bidder to participate in the bidding without being physically present;
- (2) “Absolute auction,” an auction in which the property is sold to the highest qualified bidder with no limiting conditions or amount. An absolute auction is also known as an auction without reserve;
- (3) “Auction with reserve,” an auction in which the seller or seller’s representative retains the right to establish a minimum price, to accept or decline any and all bids or to withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer. An auction with reserve is also known as a reserve auction or as an auction subject to confirmation;
- (4) “Bid,” a prospective buyer's indication or offer of a price the prospective buyer is willing to pay to purchase property at auction;
- (5) “Buyer's premium,” an advertised percentage of the high bid or flat fee added to the high bid to determine the total contract price to be paid by the buyer;
- (6) “Internet auction,” an auction in which a prospective buyer bids using electronic media. The term also includes an auction in which the auctioneer conducts the auction using electronic media;

(7) “Minimum bid auction,” an auction in which the auctioneer accepts bids at or above a disclosed price. A minimum bid auction is separate and distinct from an absolute auction or an auction with reserve.

(8) “Raft bid,” or “puffing of a bid,” a fictitious bid used to increase the final sales price;

(9) “Reserve,” the minimum price that a seller is willing to accept for a property to be sold at auction;

(10) “Shill,” a person who pretends to have no association with the auctioneer or seller and gives the impression of being an enthusiastic bidder by puffing of a bid.

20:69:06:02. Auctioneers -- License required. A restricted broker's license, referred to in this chapter as an auctioneer's license, is required for any person not licensed as a real estate broker who is acting as a real estate auctioneer. A real estate salesperson or broker associate acting under the auspices and supervision of a licensed real estate broker may sell real estate at auction without an auctioneer's license. A real estate broker may obtain an auctioneer's license without examination.

20:69:06:03. Qualifications of applicants. An applicant for a real estate auctioneer's license, in addition to the other requirements in SDCL chapter 36-21A, shall

furnish evidence of completion of 116 classroom hours within the two years before the date of application in a course on the principles and practices of real estate.

20:69:06:04. Duties of auctioneer. An auctioneer may list, advertise, show, and sell real property or business opportunities at auction only. An auctioneer may also close a real estate auction sale.

20:69:06:05. Listings to be in writing. Any contract listing a property for sale with an auctioneer must be in writing. Each written listing agreement shall show the legal description of the property; the compensation to be received by the auctioneer; the requirement that the date of the auction will be determined by written mutual agreement between seller and auctioneer; the type of auction procedure; any encumbrances and reserves; and the signatures of all parties. At the time of securing the listing, the auctioneer who obtains it shall give the person or persons signing the listing a true copy of it. An auction listing does not need to include a listing price. An auction listing terminates at the culmination of the bidding if the auctioneer will not be representing the seller through the closing of the transaction or if the seller doesn't receive an acceptable bid. If the auctioneer prepares the purchase agreement, the auction listing extends to and includes the date of closing under the purchase agreement unless the buyer and seller terminate the purchase agreement prior to closing of the transaction.

20:69:06:06. Auction advertisements. An auctioneer who advertises shall comply with the following requirements:

- (1) Auction advertisements must disclose the names and types of licenses held by all licensees involved in the transaction;
- (2) If an auction advertisement includes real estate and personal property and the personal property is to be sold by an auctioneer not licensed under this chapter or SDCL chapter 36-21A, then the auction advertisement may not be displayed in such a manner to give the impression that the real estate is being sold by the unlicensed auctioneer;
- (3) No auction may be advertised as absolute nor may any advertising contain the term, absolute auction, or the term, absolute, or any term with a similar meaning, nor may any licensee offer or sell any property at absolute auction unless:
 - (a) Except for current tax obligations or easements, there are no unrecorded liens or encumbrances on the property in favor of any other person, firm, or corporation;
 - (b) Each holder of a lien or encumbrance, by execution of the auction contract or other written agreement provided to the auctioneer, agrees to the absolute auction without regard to the amount of the highest bid or to the identity of the highest bidder; or
 - (c) A person, firm, trust, or estate, by execution of the auction listing contract or other written agreement provided to the auctioneer guarantees the complete discharge and satisfaction of all liens and encumbrances, as applicable, immediately after the absolute auction or

at the closing without regard to the amount of the highest bid or to the identity of the highest bidder;

- (4) When advertising an absolute auction, there must be the bona fide intention at the time of the advertising and at the time of the auction sale to transfer ownership of the property. The intent must exist without reliance on any agreement that any particular bid level must be reached;
- (5) If the auction is a minimum bid auction, the minimum price must be stated in any advertising and promotional material and announced at the auction;
- (6) Advertising for a sale at which some parcels will be auctioned with reserve and some items will be auctioned without reserve shall clearly and conspicuously indicate this fact to the public. In written advertisements for such a sale, the font size, style, and case of the type used in publicizing the part of the sale is to be held without reserve may not differ from the font size, style, and case used to publicize the part of the sale to be held with reserve;
- (7) An auctioneer shall disclose the existence of any buyer's premium to be charged to a buyer at an auction sale. Such disclosure shall be made in all published advertising and disclosed prior to the start of an auction.

20:69:06:07. Auction sale procedure. A real estate auction may not begin until the announced and advertised time and date, and may only occur at the announced and advertised place of the sale. All efforts of selling shall cease at the end of the sale or at the time of the announcement of no sale. If property being sold by auction is put up in tracts, each tract is the subject of a separate sale. Any sale is with reserve unless the real estate being sold is explicitly put up without reserve. A bidder may retract a bid until the

auctioneer's announcement of completion of the auction, but a bidder's retraction does not revive any previous bid.

Each sale at auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner.

20:69:06:07.01. Auction with reserve sale procedure. In an auction with reserve, the auctioneer may withdraw the real estate being offered for sale at any time until announcing completion of the sale. If the seller or an authorized representative of the seller will be allowed to bid at an auction, the auctioneer must give notice for such bidding prior to receiving any bids.

A minimum acceptable price may be disclosed with seller's written permission.

20:69:06:07.02. Absolute auction sale procedure. In an absolute auction, the seller or anyone acting upon behalf of the seller may not bid at the absolute auction or otherwise participate in the bidding process. The real estate being offered for sale at an absolute auction may not be withdrawn after an auctioneer calls for bids unless no bid is made within a reasonable time.

20:69:06:07.03. Secured party or lien holder not prohibited from bidding at an absolute auction – Conditions. Compliance with § 20:69:06:07.02 does not prohibit a secured party or other lien holder who is not the seller from bidding at an absolute auction sale, as long as such bidding does not constitute the direct or indirect establishment, or an agreement to the establishment, of a reserve price on the property by

the seller or by the auctioneer or by anyone aiding, assisting, or acting upon behalf of, the seller or the auctioneer.

20:69:06:07.04. Internet auction sale procedure. In an Internet auction sale, the auctioneer must validate a buyer's capability to participate in the sale by obtaining the buyer's name, address, e-mail address, phone number, and ability to legally enter into a contract. In addition, the auctioneer shall obtain an agreement to the terms of the auction procedure from any buyer wishing to participate in the sale.

20:69:06:08. Auctioneer to maintain records. An auctioneer must maintain copies of all agreements, listing contracts, handbills, advertisements, and other pertinent records, including closing statements if the auctioneer represented the seller through the closing of the transaction and any auction recordings whether audio, video, or audiovisual if the auction was recorded, for a period of four years. The records are subject to audit by the commission.

20:69:06:09. Certain acts prohibited. Prohibited acts include the following:

- (1) Knowingly receiving or using a rafter bid, puffing of a bid, or any type of bid rigging such as utilizing the services of a shill;
- (2) Knowingly permitting an unlicensed individual to call or take bids in an auction sale; or
- (3) Knowingly misleading or creating a false impression among the seller, buyer, or bidders in the advertising, conduct, and closing of an auction.

20:69:06:10. Rules applicable to real estate brokers, broker associates, and

salespersons. A real estate broker, broker associate, or salesperson acting as an auctioneer must follow the provisions of this chapter. Unless inconsistent with this chapter, a person licensed as an auctioneer must follow the provisions of chapter 20:69:03 and SDCL chapter 36-21A.